

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

12-

LAWRENCE WATSON)

Plaintiff)

v.)

UNKNOWN CLERK)

In her individual and official capacity)

DEPUTY REGISTER JAMES GAVAGHAN)

In his individual and official capacity)

CHIEF REGISTER SANDRA GIOVANNUCCI)

In her individual and official capacity)

FIRST JUSTICE JOAN ARMSTRONG)

In her individual and official capacity)

CHIEF JUSTICE PAULA CAREY)

In her individual and official capacity)

CHIEF JUSTICE ROBERT MULLIGAN)

In his individual and official capacity)

ATTORNEY GENERAL MARTHA COAKLEY)

In her official capacity)

Defendants)

FILED
IN CLERKS OFFICE
2012 NOV 23 P 1:12
U.S. DISTRICT COURT
DISTRICT OF MASS.

INTRODUCTION

1. This is a civil rights action under Title 42 U.S.C.

1983 for the violation of the Plaintiff's

constitutional rights to access to the courts, to

petition the government, to due process, and to equal

protection of the law. Plaintiff seeks declaratory and

injunctive relief. Also Plaintiff requests a three-

judge panel of This Court to review the

constitutionality of Section 27C and 27D of

Massachusetts General Law Chapter 261 ["M.G.L. c261,

s27C, M.G.L. c261, s27D"].

2. Defendants Unknown Clerk and Deputy Register Gavaghan failed and refused to allow Plaintiff to file an application for the waiver of the filing for the petition to probate an estate, in violation of M.G.L. c261, s27B and Plaintiff's constitutional rights under Articles I, X, XI, XII and XX of the Massachusetts Declaration of Rights, the First and the Fourteenth Amendments of the U.S. Constitution, and the Separation of Powers doctrine of the U.S. Constitution. Plaintiff alleges that Defendants Unknown Clerk and Deputy Register Gavaghan oppressed and conspired to oppress the Plaintiff in the free exercise and the enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States. Further the Plaintiff alleges that at all times Defendants Unknown Clerk and Deputy Register Gavaghan acted under the color of law to deprive willfully the Plaintiff of his rights, privileges or immunities secured or protected by the Constitution and the laws of the Commonwealth and the United States
3. Despite repeated requests from Plaintiff for intervention and notices of misconduct by subordinate registers, Defendant Chief Register Giovannucci failed

and refused repeatedly to compel Defendants Unknown Clerk and Deputy Gavaghan and registers of the Probate Court to comply with M.G.L. c261, s27B. Further the Plaintiff alleges that Defendant Chief Register Giovannucci conspired with Defendants Unknown Clerk, Deputy Gavaghan and the Register's Office of the Commonwealth's Probate and Family Court for Suffolk County to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States. Further the Plaintiff alleges that Defendant Chief Register Giovannucci was complicit in the oppression and conspiracy by Defendants Unknown Clerk and Deputy Register Gavaghan and the Register's Office of the Probate Court to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States because she maintained a policy, custom, or practice of improper and inadequate investigation and discipline of acts of misconduct by Defendants Unknown Clerk, Deputy Register Gavaghan and the Register's Office of the Probate Court. Further the failure and refusal of Defendant Chief Register Giovannucci to properly

oversee, supervise and maintain Defendants Unknown Clerk and Deputy Register Gavaghan and the Register's Office created the policies, customs and practices that resulted in complicit tolerance and authorization of continuing misconduct against the Plaintiff, the feeling of impunity among registers of the Probate Court that the constitutional rights of Plaintiff could be violated with impunity. Further the Plaintiff alleges that at all times Defendant Chief Register Giovannucci acted under the color of law to deprive willfully the Plaintiff of his rights, privileges or immunities secured or protected by the Constitution and the laws of the United States and the Commonwealth

4. Despite repeated requests from Plaintiff for intervention and notices of misconduct by subordinate judicial officers, Defendant First Justice Armstrong failed and refused repeatedly to compel Defendants Unknown Clerk, Deputy Gavaghan, Register Giovannucci and registers of the Probate Court to comply with M.G.L. c261, s27B. Further the Plaintiff alleges that Defendant First Justice Armstrong conspired with Defendants Unknown Clerk, Deputy Gavaghan, Register Giovannucci and the Register's Office of the Commonwealth's Probate and Family Court for Suffolk

County to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States. Further the Plaintiff alleges that Defendant First Justice Armstrong was complicit in the oppression and conspiracy by Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovbannucci and the Register's Office of the Probate Court to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States because she maintained a policy, custom, or practice of improper and inadequate investigation and discipline of acts of misconduct by Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovannucci and the Register's Office of the Probate Court. Further the failure and refusal of First Justice Armstrong to oversee, to supervise and to maintain properly Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovannucci and the Register's Office created the policies, customs and practices that resulted in complicit tolerance and authorization of continuing misconduct against the Plaintiff, the feeling of impunity among registers of the Probate

Court that the constitutional rights of Plaintiff could be violated with impunity. Further the Plaintiff alleges that at all times Defendant First Justice Armstrong acted under the color of law to deprive willfully the Plaintiff of his rights, privileges or immunities secured or protected by the Constitution and the laws of the United States and the Commonwealth

5. Despite repeated requests from Plaintiff for intervention and notices of misconduct by subordinate judicial officers, Defendant Chief Justice Carey failed and refused repeatedly to compel Defendants Unknown Clerk, Deputy Gavaghan, Register Giovannuci, First Justice Armstrong and registers of the Probate Court to comply with M.G.L. c261, s27B. Further the Plaintiff alleges that Defendant Chief Justice Carey conspired with Defendants Unknown Clerk, Deputy Gavaghan, Register Giovannucci, First Justice Armstrong and the Register's Office of the Commonwealth's Probate and Family Court for Suffolk County to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States. Further the Plaintiff alleges that Defendant Chief Justice Carey was complicit in the

oppression and conspiracy by Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovbannucci, First Justice Armstrong and the Register's Office of the Probate Court to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States because she maintained a policy, custom, or practice of improper and inadequate investigation and discipline of acts of misconduct by Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovannucci, First Justice Armstrong and the Register's Office of the Probate Court. Further the failure and refusal of Chief Justice Carey to oversee, to supervise and to maintain properly Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovannucci, First Justice Armstrong and the Register's Office created the policies, customs and practices that resulted in complicit tolerance and authorization of continuing misconduct against the Plaintiff, the feeling of impunity among registers and justices of the Probate Court that the constitutional rights of Plaintiff could be violated with impunity. Further the Plaintiff alleges that at all times Defendant Chief Justice

Carey acted under the color of law to deprive willfully the Plaintiff of his rights, privileges or immunities secured or protected by the Constitution and the laws of the United States and the Commonwealth

6. Despite repeated requests from Plaintiff for intervention and notices of misconduct by subordinate judicial officers, Defendant Chief Justice Mulligan failed and refused repeatedly to compel Defendants Unknown Clerk, Deputy Gavaghan, Register Giovannuci, First Justice Armstrong, Chief Justice Carey and registers of the Probate Court to comply with M.G.L. c261, s27B. Further the Plaintiff alleges that Defendant Chief Justice Mulligan conspired with Defendants Unknown Clerk, Deputy Gavaghan, Register Giovannucci, First Justice Armstrong, Chief Justice Carey and the Register's Office of the Commonwealth's Probate and Family Court for Suffolk County to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States. Further the Plaintiff alleges that Defendant Chief Justice Mulligan was complicit in the oppression and conspiracy by Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovannucci, First Justice

Armstrong, Chief Justice Carey and the Register's Office of the Probate Court to oppress Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States because he maintained a policy, custom, or practice of improper and inadequate investigation and discipline of acts of misconduct by Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovannucci, First Justice Armstrong, Chief Justice Carey and the Register's Office of the Probate Court. Further the failure and refusal of Chief Justice Mulligan to oversee, to supervise and to maintain properly Defendants Unknown Clerk, Deputy Register Gavaghan, Register Giovannucci, First Justice Armstrong, Chief Justice Carey and the Register's Office created the policies, customs and practices that resulted in complicit tolerance and authorization of continuing misconduct against the Plaintiff, the feeling of impunity among registers and justices of the Probate Court that the constitutional rights of Plaintiff could be violated with impunity. Further the Plaintiff alleges that at all times Defendant Chief Justice Mulligan acted under the color of law to deprive willfully the Plaintiff of his

rights, privileges or immunities secured or protected by the Constitution and the laws of the United States and the Commonwealth

7. Defendant Attorney General Coakley has failed and refused repeatedly to enforce compliance of M.G.L. c261, s27B by the Commonwealth's judicial officers, in violation of Plaintiff's constitutional rights under Articles I, X, XI, XII and XX of the Massachusetts Declaration of Rights and the First and the Fourteenth Amendments of the US Constitution. Plaintiff alleges that Defendant Coakley's promulgation and enforcement of M.G.L. c261, s27B oppressed and conspired to oppress the Plaintiff in the free exercise and enjoyment of his rights and privileges secured to him by the Constitutions of the Commonwealth and the United States. Further Plaintiff alleges that the failure and the refusal of Defendant Attorney General Coakley to insure compliance with the statutes of the Commonwealth, the Massachusetts Declaration of Rights and the U.S. Constitution created the policies, customs and practices that resulted in complicit tolerance and authorization of continuing misconduct against the Plaintiff, the feeling of impunity among registers and justices of the Probate Court that the

constitutional rights of Plaintiff could be violated with impunity. Further the Plaintiff alleges that at all times Defendant Coakley acted under the color of law to deprive willfully the Plaintiff of his rights, privileges or immunities secured or protected by the Constitution and the laws of the United States and the Commonwealth.

8. M.G.L. c261, s27C(4) and 27D are unconstitutional for violation of The First and the Fourteenth Amendments of the U.S., warranting review by a three-judge panel of This Court for a permanent injunction, pursuant to Title 28 U.S.C. 2281.

PARTIES

1. Lawrence Watson, herein the Plaintiff, is a resident of Boston, Massachusetts in Suffolk County and a resident of the United States of America
2. Defendant Unknown Clerk was at all times relevant to this complaint a register of the Probate and Family Court for Suffolk County, a duly authorized court of the Commonwealth of Massachusetts
3. Defendant James Gavaghan was at all times relevant to this complaint Deputy Register of the Probate and Family Court for Suffolk County, a duly authorized court of the Commonwealth of Massachusetts

4. Defendant Sandra Giovannucci was at all times relevant to this complaint Chief Register of the Probate and Family Court for Suffolk County, a duly authorized court of the Commonwealth of Massachusetts
5. Defendant Joan Armstrong was at all times relevant to this complaint, First Justice Chief Justice of the Probate and Family Court for Suffolk County, a duly authorized department/division/branch of the Commonwealth of Massachusetts.
6. Defendant Paula Carey was at all times relevant to this complaint, Chief Justice of the Administrative Office of the Probate Courts, a duly authorized department/division/branch of the Commonwealth of Massachusetts.
7. Defendant Robert Mulligan was at all times relevant to this complaint, Chief Justice of Administration and Management, a duly authorized department/division/branch of the Commonwealth of Massachusetts.
8. Defendant Martha Coakley was at all times relevant to this complaint the Attorney General of the Commonwealth of Massachusetts, a duly elected officer of the Commonwealth of Massachusetts.

JURISDICTION

1. Jurisdiction is based upon Title 42 U.S.C. 1983, Title 28 U.S.C. 2201, Title 28 U.S.C. 2281, Title 28 U.S.C. 2284, Title 18 U.S.C. 3231, and on the pendent jurisdiction of This Court to entertain a claim arising under state law

STATEMENT OF FACTS

1. On June 1, 2012 Plaintiff's mother, Leola Watson passed away

2. On September 1, 2012 Plaintiff served all of the potential heirs of the Estate of Leola Watson with the required forms that are necessary to request the informal probate of her estate and for appointment as executrix of her estate.

3. Also on September 1, 2012 Plaintiff attempted to file a petition for the informal probate of a will and for appointment as executrix of the Estate of Leola Watson in the Probate and Family Court of Suffolk County [the "Probate Court"]. Plaintiff attempted to file an application for the waiver of the filing fee in the matter but was denied by Defendant Unknown Clerk, who stated that the Probate Court does not accept applications for the waiver of fees in the petitions to probate an estate.

4. On September 25, 2012 Plaintiff wrote Defendants Giovannucci, Armstrong, Carey, Mulligan and Coakley to inform each of the failure and the refusal of the registers of the Probate Court to allow Plaintiff to file an application for the waiver of the filing fee in the matter of the Estate of Leola Watson

5. On October 5, 2012 Kim Wright, Deputy Court Administrator of the Administrative Office of the Probate Court, sent Plaintiff correspondence in which she stated that Defendant Giovannucci assured her that the Register's Office of the Probate Court would comply with M.G.L. c261, s27B

6. On October 17, 2012 Plaintiff attempted again to an application for the waiver of the filing fee for a petition for the informal probate of a will and for the appointment as executrix of the Estate of Leola Watson but was denied by Defendant Deputy Register Gavaghan

7. On October 22, 2012 Plaintiff wrote again Defendants Giovannucci, Armstrong, Carey, Mulligan and Coakley to inform each of the failure and the refusal of the registers of the Probate Court to allow Plaintiff to file an application for the waiver of the filing fee in the matter of the Estate of Leola Watson

8. On November 2, 2012 Christopher Quaye, Administrative Attorney of the Administrative Office of the Probate Court sent Plaintiff correspondence in which he stated that Plaintiff was required to complete and submit the proper forms.

9. On November 16, 2012 Plaintiff attempted again to an application for the waiver of the filing fee for a petition for the informal probate of a will and appointment as executrix of the Estate of Leola Watson but was denied again by Defendant Deputy Register Gavaghan, who alleged that Plaintiff did not have all of the proper forms for filing

10. On November 19, 2012 Plaintiff appeared at the Office of Defendant Carey to request action on the continued failure and refusal of the Register's Office to comply with M.G.L. c261, s27. Deputy Court Administrator Wright informed Plaintiff that Defendant Carey's Office was researching Plaintiff's complaints and would contact him shortly

11. At all times during his efforts to file an application for the waiver of fees in the Probate Court, Plaintiff was the recipient of Food Stamps and therefore was indigent, as defined by M.G.L. c261,

s27A, SJC Rule 3:10(f)(i), and state and federal poverty guidelines

12. To date Defendants Giovannucci, Armstrong, Mulligan, and Coakley have failed and have refused to respond to Plaintiff's letters of complaint and to take action to prevent the continued defiance of M.G.L. c261, s27B and the violation of Plaintiff's constitutional rights.
13. To date Defendant Carey has failed and has refused to take action to prevent the continued defiance of M.G.L. c261, s27B and the violation of Plaintiff's constitutional rights.
14. Defendants Unknown Clerk, Gavaghan and Giovannucci lack immunity from Plaintiff's claims under Title 42 U.S.C. 1983. See McCray v State of MD, 456 F.2d 1 at 4 (1972) "In the instant case, in respect to filing papers, the clerk has no discretion that merits insulation by a grant of absolute immunity; the act is mandatory... His duty, although associated with the court system, is not quasi-judicial (meaning entailing a discretion similar to that exercised by a judge) Clerical duties are generally classified as ministerial, 2 Harper & James, The Law of Torts, 1644 (1956), and the act of filing

papers with the court is as ministerial and inflexibly mandatory as any of the clerk's responsibilities.";

See Also Ginsburg v Stern, 125 F.Supp. 596, 601

(W.D.Pa.1954) (clerk's failure to file papers would be a "patent" violation of constitutional rights); Whirl

v Kern, 407 F.2d 781 (5th Cir.), cert. denied, 396

U.S. 901, 90 S.Ct. 210, 24 L.Ed.2d 177 (1969) (denying

state ministerial officers absolute immunity under

section 1983); Washington v Official Court

stenographer, 251 F.Supp. 945 (E.D.Pa.1966)

15. Defendants Armstrong, Carey and Mulligan lack immunity from Plaintiff's claims under Title 42 U.S.C. 1983. See Stump v Sparkman, 435 U.S. 349, 362, 98 S.Ct. 1099, 1107, 55 L.Ed.2d 331 (1978) (The U.S. Supreme Court discussed the two-prong functional test for absolute judicial immunity); See also Cleavinger v Saxner, 474 U.S. 193, 201, 106 S.Ct. 496, 88 L.Ed.2d 507 (1985) (observing that "immunity analysis rests on functional categories, not on the status of the defendant."); Laskowski v Mears, 600 F.Supp. 1568 at 1573 (N.D.1985) ("personnel decisions are separate from the jurisdiction, power and authority of the court"); Forrester v White, 484 U.S. at 228-30, 108 S.Ct. at 544-46, 98 L.Ed.2d 555, 566 (1988) (The U.S.

Supreme Court has determined that judges do not receive immunity when acting in administrative, legislative, or executive roles.) Cameron v Seitz, 38 F.3d 264, 271 (1994) (Noting that whenever an action taken by a judge is not an adjudication between the parties, it is less likely that it will be deemed judicial)

16. Defendants Carey lacks immunity from Plaintiff's claims under Title 42 U.S.C. 1983 because her office is not a judicial office, as stated by the Commonwealth of Massachusetts. See M.G.L. c221B, s5; Further Defendant Carey lacks immunity from Plaintiff's claims under Title 42 U.S.C. 1983 because she is merely a manager/supervisor of judicial officers. See M.G.L. c211B, s10

17. Defendants Mulligan lacks immunity from Plaintiff's claims under Title 42 U.S.C. 1983 because his office is not a judicial office, as stated by the Commonwealth of Massachusetts. See M.G.L. c221B, s6; Further Defendant Mulligan lacks immunity from Plaintiff's claims under Title 42 U.S.C. 1983 because he is merely a manager/supervisor of judicial officers. See M.G.L. c211B, s9

18. Defendant Coakley lacks immunity from Plaintiff's claims under Title 42 U.S.C. 1983. See Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980)

COUNT I: VIOLATION OF 42 U.S.C SECTION 1983 BY
DEFENDANTS UNKNOWN CLERK, GAVAGHAN, GIOVANNUCCI,
ARMSTRONG, CAREY, MULLIGAN AND COAKLEY - FIRST
AMENDMENT

19. The Plaintiff restates the allegation in paragraphs 1 through 18 and incorporates said paragraphs herein as paragraph 189The refusal of Defendants Unknown Clerk and Gavaghan to allow Plaintiff to file an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate violated Plaintiff's constitutional rights under Articles I and XI of the Massachusetts Declaration of Rights and the First Amendment of the U.S. Constitution.

20. The refusal of Defendants Unknown Clerk and Gavaghan to send immediately Plaintiff's an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as

executrix of said Estate to a justice of the court, pursuant to M.G.L. c261, s27C(3), violated Plaintiff's constitutional rights under Articles I and XI of the Massachusetts Declaration of Rights and the First Amendment of the U.S. Constitution.

21. The repeated refusal of Defendants Giovannucci, Armstrong, Carey and Mulligan to compel Defendants Unknown Clerk and Gavaghan to allow Plaintiff to file an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate made each supervisor liable for the violation of Plaintiff's constitutional rights under Articles I and XI of the Massachusetts Declaration of Rights and the First Amendment of the U.S. Constitution.

22. Since Plaintiff is indigent, Defendants Unknown Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan violated clearly established law pertaining to the right of the indigent to access the court as guaranteed by the First Amendment of the U.S. Constitution. See Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)

23. Since Plaintiff is indigent and the Commonwealth has a monopoly on the probating of an estate, Defendants Unknown Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan violated clearly established law pertaining to the right of the indigent to access the court as guaranteed by the First Amendment of the U.S. Constitution. See Boddie v Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1969)

24. Defendant Coakley's promulgation and enforcement of M.G.L. c261, s27B violated Plaintiff's constitutional rights under Articles I and XI of the Massachusetts Declaration of Rights and the First Amendment of the U.S. Constitution and clearly established law. See Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980)

COUNT II: VIOLATION OF 42 U.S.C SECTION 1983 BY
DEFENDANTS UNKNOWN CLERK, GAVAGHAN, GIOVANNUCCI,
ARMSTRONG, CAREY, MULLIGAN AND COAKLEY - DUE PROCESS

CLAUSE OF THE FOURTEENTH AMENDMENT

25. The Plaintiff restates the allegation in paragraphs 1 through 25 and incorporates said paragraphs herein as paragraph 26

26. The refusal of Defendants Unknown Clerk and Gavaghan to allow Plaintiff to file an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate violated Plaintiff's constitutional rights under Articles XI and XII of the Massachusetts Declaration of Rights and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

27. The refusal of Defendants Unknown Clerk and Gavaghan to send immediately Plaintiff's an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate to a justice of the court, pursuant to M.G.L. c261, s27C(3), violated Plaintiff's constitutional rights under Articles XI and XII of the Massachusetts Declaration of Rights and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution

28. The repeated refusal of Defendants Giovannucci, Armstrong, Carey and Mulligan to compel Defendants Unknown Clerk and Gavaghan to allow Plaintiff to file an application for the waiver of the filing fee to

petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate made each supervisor liable for the violation of Plaintiff's constitutional rights under Articles XI and XII of the Massachusetts Declaration of Rights and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

29. Since M.G.L. c261, s27B and 27C(3) create a liberty interest for Plaintiff in the filing of an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate, Defendants Unknwon Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan violated Plaintiff's constitutional rights under Articles XI and XII of the Massachusetts Declaration of Rights and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. See Castle Rock v Gonzales, 545 U.S. 748, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005)

30. Since Plaintiff is indigent, Defendants Unknown Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan violated clearly established law pertaining to the right of the indigent to due process, as

guaranteed by the Due Process Clause of the Fourteenth Amendment of the U.S. See Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)

31. Since Plaintiff is indigent and the Commonwealth has a monopoly on the probating of an estate, Defendants Unknown Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan violated clearly established law pertaining to the right of the indigent to due process, as guaranteed by the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. See Boddie v Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1969)

32. Defendant Coakley's promulgation and enforcement of M.G.L. c261, s27B violated Plaintiff's constitutional rights under Articles XI and XII of the Massachusetts Declaration of Rights and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and clearly established law. See Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980)

COUNT III: VIOLATION OF 42 U.S.C SECTION 1983 BY
DEFENDANTS UNKNOWN CLERK, GAVAGHAN, GIOVANNUCCI,
ARMSTRONG, CAREY, MULLIGAN AND COAKLEY - EQUAL
PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

33. The Plaintiff restates the allegation in paragraphs 1 through 33 and incorporates said paragraphs herein as paragraph 34

34. The refusal of Defendants Unknown Clerk and Gavaghan to allow Plaintiff to file an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate violated Plaintiff's constitutional rights under Articles X and XI of the Massachusetts Declaration of Rights and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

35. The refusal of Defendants Unknown Clerk and Gavaghan to send immediately Plaintiff's an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate to a justice of the court, pursuant to M.G.L. c261, s27C(3), violated Plaintiff's constitutional rights under Articles X and XI of the Massachusetts Declaration of Rights and the First Amendment of the U.S. Constitution

36. The repeated refusal of Defendants Giovannucci, Armstrong, Carey and Mulligan to compel Defendants

Unknown Clerk and Gavaghan to allow Plaintiff to file an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate made each supervisor liable for the violation of Plaintiff's constitutional rights under Articles X and XI of the Massachusetts Declaration of Rights and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

37. Since M.G.L. c261, s27B grants Plaintiff the right to file an application for the waiver of filing fees in the probate of a will and other courts of the Commonwealth allow the initiation of the probate of a will without the service of documents to all potential heirs, The refusal and the failure of Defendants Unknown Clerk and Gavaghan to comply with M.G.L. c261, s27B and the repeated refusal of Defendants Giovannucci, Armstrong, Carey and Mulligan to compel Defendants Unknown Clerk and Gavaghan to comply with said statute violate Plaintiff's constitutional rights under Articles X and XI of the Massachusetts Declaration of Rights and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

38. Since Plaintiff is indigent, Defendants Unknown Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan violated clearly established law pertaining to the right of the indigent to equal protection to the law, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the U.S. See Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956)

39. Since Plaintiff is indigent and the Commonwealth has a monopoly on the probating of an estate, Defendants Unknown Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan violated clearly established law pertaining to the right of the indigent to equal protection to the law, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. See Boddie v Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1969)

40. Defendant Coakley's promulgation and enforcement of M.G.L. c261, s27B violated Plaintiff's constitutional rights under Articles X and XI of the Massachusetts Declaration of Rights and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and clearly established law. See

Supreme Court of Virginia v. Consumers Union, 446 U.S.
719, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980)

COUNT IV: VIOLATION OF 42 U.S.C SECTION 1983 BY
DEFENDANTS UNKNOWN CLERK, GAVAGHAN, GIOVANNUCCI,
ARMSTRONG, CAREY, MULLIGAN AND COAKLEY - THE SEPARATION
OF POWERS DOCTRINE

41. The Plaintiff restates the allegation in paragraphs 1 through 41 and incorporates said paragraphs herein as paragraph 42
42. The refusal of Defendants Unknown Clerk and Gavaghan to allow Plaintiff to file an application for the waiver of the filing fee to petition the Probate Court for the informal probate of the Estate of Leola Watson and for appointment as executrix of said Estate in direct contravention and in blatant defiance of M.G.L. c261, s27B violated Plaintiff's constitutional rights under Articles XX of the Massachusetts Declaration of Rights and the Separation of Powers Doctrine of the U.S. Constitution.
43. The repeated refusal of Defendants Giovannucci, Armstrong, Carey and Mulligan to compel Defendants Unknown Clerk and Gavaghan to comply with M.G.L. c261, s27B is in direct contravention and in blatant defiance of M.G.L. c261, s27B violated Plaintiff's

constitutional rights under Articles XX of the Massachusetts Declaration of Rights and the Separation of Powers Doctrine of the U.S. Constitution.

44. Defendant Coakley's promulgation and enforcement of M.G.L. c261, s27B is in direct contravention and in blatant defiance of statute and violates Plaintiff's constitutional rights under Articles XX of the Massachusetts Declaration of Rights and the Separation of Powers Doctrine of the U.S. Constitution.

45. Defendants Unknown Clerk, Gavaghan, Giovannucci, Armstrong, Carey and Mulligan are officers of the judicial branch of the Commonwealth. Defendant Coakley is an officer of the executive branch of the Commonwealth. M.G.L. c261, s27B was enacted by the legislative branch of the Commonwealth. The failure of the judicial branch and/or the executive branch to comply explicitly with statutes that have been enacted by the legislative branch is redefining said statutes and therefore performing the duties of the legislative branch, in violation of the Separation of Powers Doctrine of the U.S. Constitution

COUNT V. VIOLATION OF THE FOURTEENTH AMENDMENT BY

M.G.L. 261, s27C and 27D

46. The Plaintiff restates the allegation in paragraphs 1 through 46 and incorporates said paragraphs herein as paragraph 47

47. In relevant part, M.G.L. c261, s27C dictates the appellate procedure for the denial of an indigent affiant's application for the waiver of fees in the Commonwealth.

48. In relevant part, M.G.L. c261, s27C(4) states, "...if there is an appeal pursuant to section twenty-seven D following a denial, **the court shall**, within three days, **set forth** its written findings and reasons justifying such denial, **which document shall be part of the record on appeal.**" (emphasis added)

49. In relevant part, M.G.L. c261C, s27D states, "[U]pon receipt of notice of appeal timely filed the clerk or register shall forthwith notify the judge or justice, who shall within three days set forth his written findings and reasons as provided in paragraph (4) of section twenty-seven C...**The clerk or register shall then forward** the affidavit and request, the court's findings and reasons for denial and **any other documents on file relevant to the appeal**, to the clerk of the court deciding the appeal..." (emphasis added)

50. M.G.L. c261, s27C(4) and 27D are constitutionally deficient under the Due Process Clause of the Fourteenth Amendment because it violates the fundamental requisite of due process which is a meaningful opportunity to be heard. A denied applicant of an application for the waiver of fees is unable to contribute and/or to control the evidence that is considered in the appeal of said denied application.

CONCLUSION

Wherefore, Plaintiff requests that This Court grant the following relief

1. Declare that Defendants lack immunity from Plaintiff's claims under Title 42 U.S.C. 1983
2. Declare that Defendants violated Title 42 U.S.C. 1983
3. Issue immediate injunctive relief to prevent the continued violation of M.G.L. c261, s27B by Defendants and the Probate Courts of the Commonwealth
4. Declare that Plaintiff is indigent
5. Declare that Plaintiff is allowed immediately to initiate the petition for the probate of the Estate of Leola Watson

6. Declare that the Commonwealth cannot deny the indigent access to its probate courts on account of lack of finances
7. Pursuant to Title 28 U.S.C. 2281, assign three-judge panel of This Court to review the constitutionality of M.G.L. c261, s27C(4) and 27D
8. Pursuant to Title 28 U.S.C. 2284, declare M.G.L. c261, s27C(4) and 27D unconstitutional and issue a permanent injunction to prevent Defendant Attorney General Coakley and the Commonwealth of Massachusetts from enjoining said statutes in the future
9. Issue written specific findings of facts on this matter



Lawrence Watson

12 Verrill Street, #3

Boston, MA 02126

Date: November 23, 2012

CERTIFICATE OF SERVICE

I, Lawrence Watson, do hereby certify that a true copy
of this document was served in hand on November 23,
2012 upon Attorney General Martha Coakley of the
Office of the Attorney General at One Ashburton Place

in Boston, MA 02108



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Date: November 23, 2012